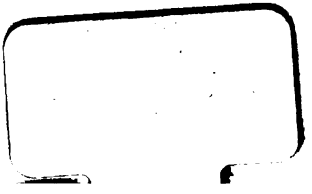

NEW JERSEY

State Bar Association

YEAR BOOK

1907-1908

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1907-1908

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CERTIFICATE OF INCORPORATION

OF

THE NEW JERSEY STATE BAR ASSOCIATION

This is to certify that we, the subscribers, members of the Bar of the State of New Jersey, desiring to associate ourselves for the purpose of forming a State Bar Association under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act to incorporate Associations not for pecuniary profit," approved April 21, 1898, do by this, our certificate, set forth:

FIRST: The name by which this Association shall be known is "THE NEW JERSEY STATE BAR ASSOCIATION."

SECOND: The purposes for which this Association is formed are to maintain the honor and dignity of the profession of the law; to cultivate social relations among its members; to suggest and urge reforms in the law, and to aid in the administration of justice.

THIRD: The principal office of this Association is at State House, in the City of Trenton, and the name of the agent therein and in charge thereof, and upon whom process against this Association may be served, is S. Meredith Dickinson.

FOURTH: Any attorney at law of the State of New Jersey shall be qualified for membership in this Association and may be admitted thereto in the manner prescribed by its by-laws.

FIFTH: The number of Trustees of this Association shall be fifteen (15), and the names of the Trustees selected for the first year of its existence are:

SAMUEL H. GREY,	CHARLES C. BLACK,	EDWARD S. ATWATER,
J. FRANKLIN FORT,	CHARLES A. REED,	DAVID O. WATKINS,
DAVID J. PANCOAST,	ROBERT H. MCCARTER,	JOSEPH THOMPSON,
ROBERT S. WOODRUFF,	FRANCIS SCOTT,	J. KEARNY RICE,
ALBERT C. WALL,	RICHARD S. KUHL,	JAMES S. ERWIN.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals this seventeenth day of June, eighteen hundred and ninety-nine.

Sealed and delivered
in the presence of [L. S.]
G. A. BOURGEOIS,
in the presence of
ELI H. CHANDLER, as to
the signature of G. A. Bourgeois. M. C. C.

S. H. GREY.	[L. S.]	DAVID J. PANCOAST.	[L. S.]
E. A. ARMSTRONG.	"	ALBERT C. WALL.	"
CHARLES C. BLACK.	"	J. KEARNY RICE.	"
CHARLES A. REED.	"	JAMES S. ERWIN.	"
R. H. MCCARTER.	"	J. FRANKLIN FORT.	"
R. S. WOODRUFF.	"	FRANCIS SCOTT.	"
RICHARD S. KUHL.	"	EDWARD S. ATWATER.	"
DAVID O. WATKINS.	"	ALLEN B. ENDICOTT.	"
E. A. HIGBEE.	"	ROBT. B. STEPHANY.	"
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MARK R. SOOY.	"	ECKARD P. BUDD.	"
CHAS. K. CHAMBERS.	"	SAM'L W. BELDON.	"
WM. H. CARSON.	"	E. G. C. BLEAKLY.	"
S. C. WOODHULL.	"	HOWARD CARROW.	"
P. V. VOORHEES.	"	RICHARD T. MILLER.	"
HOWARD COOPER.	"	THOS. W. TRENCHARD.	"
JAS. R. HOAGLAND.	"	WILLIAM A. LOGUE.	"
HENRY S. ALVORD.	"	HALSEY M. BARRETT.	"
ADRIAN RIKER.	"	FRED. T. JOHNSON.	"
JOHN S. JESSUP.	"	ROBERT S. CLYMER.	"
JOSEPH J. SUMMERILL.	"	A. H. SWACKHAMER.	"
LEWIS STARR.	"	CHAS. A. SKILLMAN.	"
GEORGE H. LARGE.	"	H. B. HERR.	"
WALTER F. HAYHURST.	"	WM. M. LANNING.	"
JAMES BUCHANAN.	"	BARTON B. HUTCHINSON.	"
JAS. H. VAN CLEEF.	"	WILLARD P. VOORHEES.	"
ALAN H. STRONG.	"	JAMES S. WIGHT.	"
JOHN S. VOORHEES.	"	WILLIAM M. LEWIS.	"
JOHN H. REYNOLDS.	"	GEORGE RUST.	"
ROBERT WILLIAMS.	"	WAYNE DUMONT.	"
C. FRANK KIREKER.	"	WM. T. HILLIARD.	"
I. OAKFORD ACTON.	"	JONATHAN W. ACTON.	"
H. K. GASTON.	"	W. V. STEELE.	"
NELSON Y. DUNGAN.	"	CRAIG A. MARSH.	"
GEORGE A. ANGLE.	"	EDWIN ROBERT WALKER.	"

BY-LAWS

ARTICLE I.

NAME.

The Association shall be called the New Jersey State Bar Association.

ARTICLE II.

MEMBERSHIP.

All applications for membership in this Association shall be addressed to the Committee on Admissions, whose duty it shall be to investigate the character and professional standing of the applicants. All such applications must be transmitted in writing to the Secretary, and by him referred to the Committee on Admissions. If the Committee on Admissions at its meeting shall be unanimously in favor of the application, or if all the members of such Committee shall signify in writing their approval of the application, the applicant so approved shall thereupon become a member of this Association, and shall be enrolled by the Secretary. If the Committee on Admissions shall not be in favor of any applicant, it shall then be the duty of the Secretary, upon the request of any member of the Association, to report at the next annual meeting of the Association the action taken by the Committee on Admissions. All applications so reported to the Association shall be determined by ballot. Several such nominees may be voted upon by the same ballot, and the placing of the word "no" against any name or names upon the ballot shall be deemed a negative vote against such names only. New members may be elected at the annual meetings of the Association by a majority of the members present and voting.

No member of the Bar, residing in a county where there is a local Bar Association, shall become a member of this Association unless he shall also be a member of such local association or be

approved by the members of this Association from such county in writing.

ARTICLE III.

RESIGNATIONS.

Resignations of membership shall be in writing, addressed to the President or Secretary. If the member offering such resignation is in good standing and not indebted to the Association, he shall thereupon cease to be a member.

ARTICLE IV.

DUES.

The Treasurer shall notify all members by mail or personally when their annual dues become payable. If not paid within thirty (30) days, the Treasurer shall report the default to the Board of Trustees, who shall cause notice to be given in like manner to the member in arrears, that if such dues are not paid within two months, he will be liable to suspension. At any time within six months thereafter, the Board of Trustees shall cite such member to appear before them, and if at the time and place appointed by the Board no good cause be shown to the contrary, the said Board shall suspend such member. Such member shall not be restored to membership except by a vote of the Association at a regular meeting.

ARTICLE V.

OFFICERS.

The officers of this Association shall be a President, first, second and third Vice Presidents, nine (9) Directors (one of whom shall be from each judicial district), a Secretary and a Treasurer. The duties of the officers shall be as follows:

The President shall preside at all meetings of the Association, appoint the standing committees, and perform such other duties as the Association may, from time to time, direct. In the absence of the President, it shall be the duty of the Vice Presidents, in the order in which they are named, to perform the duties

of the President, as the Association shall from time to time direct.

It shall be the duty of the Secretary to keep accurate minutes of the meetings of the Association, and perform all such other duties as the By-Laws may prescribe.

It shall be the duty of the Treasurer to receive all moneys and properties of the Association; to make such disbursements as the By-Laws prescribe, and render an annual report of all receipts and disbursements to the Association.

ARTICLE VI.

ELECTION.

The officers shall be elected by the Association at the annual meeting, for a term of one year. After the President has served a term in that office, he shall be ineligible thereto for a year thereafter. Election of officers shall be by ballot unless on a call for nominations for an office, and only one person is nominated therefor. A majority of the votes cast for any office shall be necessary to an election. Vacancies in any office may be filled for the unexpired term by the Association at any regular meeting, or a meeting called for that purpose. The Board of Trustees may fill any vacancy until an election shall be had.

ARTICLE VII.

VACANCIES.

If, for any reason, there be a failure to elect any officer or officers at the annual meeting, the officer or officers then in office shall hold over until an election shall be held, as in case of a vacancy.

ARTICLE VIII.

BOARD OF TRUSTEES.

The President, Vice President, Secretary, Treasurer and Directors shall constitute the Board of Trustees, who shall manage the affairs of the Association, subject to the By-Laws.

The Trustees shall have charge of the property of the Association. They shall arrange the program for each regular meeting, including the annual address, the reading of papers, etc., and shall do and perform all acts imposed by the By-Laws and incident to their duties as Trustees of the Association.

ARTICLE IX.

DEBTS—HOW INCURRED.

No debts shall be incurred and no continuing obligations entered into without the consent of the Association or of two-thirds of the Trustees. No funds of the Association shall be appropriated to any use or paid out without the consent of the Board of Trustees, unless the payment be ordered by a vote of the members present at a meeting of the Association.

ARTICLE X.

COMMITTEES.

There shall be a Committee on Admission, a Committee on Grievances, a Committee on Prosecutions, a Committee on Law Reform, a Committee on Legal Education, a Committee on Legislation, and a Committee on Legal Biography, composed of five (5) members each. Such committees shall be appointed for a term of one (1) year annually by the President.

COMMITTEE ON ADMISSIONS.

All applications for membership in this Association shall be addressed to the Committee on Admissions, whose duty it shall be to investigate the character and professional standing of applicants and report thereon, as provided in Article II hereof.

COMMITTEE ON GRIEVANCES.

The Committee on Grievances shall receive all complaints which shall be made in matters affecting the interest of the legal profession, or any member thereof, the practice of the law, or the administration of justice, and report the same to the Association

or Supreme Court, with such recommendations as it may deem advisable. The committee shall determine its own rules of procedure. The proceedings of this committee shall be deemed confidential and shall be kept secret except so far as reports of the same shall be necessary, and officially made to the Association or the Court.

COMMITTEE ON PROSECUTIONS.

The Committee on Prosecutions shall prosecute all complaints referred to it by the Association or the Grievance Committee.

The reasonable disbursements incurred for investigation by the Prosecution Committee may be paid out of the funds of the Association, under the direction of the Board of Trustees.

COMMITTEE ON LEGAL BIOGRAPHY.

The Committee on Legal Biography shall provide for the preservation among the archives of the Association of suitable written or printed memorials of the lives and characters of the deceased members of the New Jersey Bar, and procure and report for the next annual meeting a short biographical sketch of each member whose death shall have been reported at the annual meeting.

COMMITTEE ON LAW REFORM AND LEGISLATION.

The Committee on Law Reform shall observe and report upon the particular working of the judicial system of the State, and recommend changes which observation and experience may suggest.

The Legislative Committee shall suggest or advise as to proposed changes in the Statute Laws of the State.

COMMITTEE ON LEGAL EDUCATION.

The Committee on Legal Education shall, from time to time, suggest and aid in the establishment of a preliminary educational standard for applicants for admission to the Bar, and a course of study for students at law, as well as the period of study required.

ARTICLE XI.

ANNUAL MEETING.

The annual meeting shall be held on the Friday next preceding the June term of the Court of Errors and Appeals in each year at such place as shall be fixed by the Board of Trustees.

ARTICLE XII.

SPECIAL MEETINGS.

Special meetings of this Association may be called by the President at any time, the same to be held at such time and place as may be designated in the call. He shall call special meetings when directed by the Trustees or when requested in writing by ten (10) members of the Association.

ARTICLE XIII.

QUORUM.

Twenty (20) members shall constitute a quorum at any regular or special meeting. The Secretary shall notify members of every meeting by notice sent by mail at least ten days before such meeting. The purpose of all special meetings shall be stated in the call and in the notices served on the members, and no other business shall be transacted.

ARTICLE XIV.

TRUSTEES' MEETINGS.

The Board of Trustees shall hold at least three meetings each year upon the first day of each term of the Supreme Court, at Trenton, or at such other time and place as the President may designate.

ARTICLE XV.

AMENDMENTS.

These By-Laws may be added to or amended at any regular or special meeting upon a two-thirds vote of the members of the

Association present, *provided* the proposed amendment shall have been submitted to the Secretary of the Association and mailed by him with the notice of the meeting to each member of the Association.

ARTICLE XVI.

ADMISSION FEE AND DUES.

Each member shall pay on admission a fee of five dollars ($5.00) and five dollars ($5.00) annual dues. Such dues shall be payable in advance on the first day of January in each year.

ARTICLE XVII.

ASSOCIATION SEAL.

The seal of this Association shall be "THE NEW JERSEY STATE BAR ASSOCIATION, 1899."

ARTICLE XVIII.

ORDER OF BUSINESS.

The Order of Business at the meetings of the Association shall be as follows:

1. Reading minutes of preceding meeting.
2. Nominations for membership.
3. Report of Treasurer.
4. Report of Committee on Admissions.
5. Election of Members.
6. Report of Standing Committees.
7. Report of Special Committees.
8. Election of Officers.
9. Miscellaneous Business.

ANNUAL MEETING

ANNUAL MEETING

The annual meeting of the New Jersey State Bar Association was held June 14th, 1907, at 3.30 o'clock in the afternoon, in the Brighton Casino, Atlantic City, New Jersey.

The meeting was called to order by the President, Hon. Gilbert Collins, and on motion the reading of the minutes of the preceding meeting was omitted.

The following gentlemen were nominated for membership, viz.:

JAMES H. HAYES, JR., JOHN P. LLOYD,
MATTHEW JEFFERSON, JEROME D. GEDNEY,
HERBERT C. GILSON, GEORGE HOLMES,
HORACE ROBERSON,

and on motion were duly elected.

The Treasurer submitted the following report, which was approved and ordered to be entered at length upon the minutes.

TREASURER'S REPORT

RECEIPTS.

Balance from Charles C. Black, late Treasurer, including balance shown by report and dues collected after same was presented.....		$2,452.39
Initiations—46 members, at $5.....		230.00
Dues for 1907—233 members, at $5....	$1,115.00	
Dues for 1906—31 members, at $5.....	155.00	
Dues for 1905—12 members, at $5.....	60.00	
Dues for 1904—4 members, at $5.....	20.00	
		1,350.00
Cash received from guests at banquet.....		16.75
Interest to October 1, 1906, on bank balance.....		15.11
Interest from October 1, 1906, to June 14, 1907...		32.68
Total		$4,096.93

DISBURSEMENTS.

1906.		Voucher.	
July 2	Vredenburgh, Wall & Van Winkle, expenses	1..	$47.47
	Frank M. Conley, services	2..	14.50
Aug. 20	Wm. J. Kraft, expenses	3..	6.00
	S. Chew & Sons Co., printing	4..	15.60
31	J. B. Thompson & Co., banquet	5..	505.00
Sept. 17	S. Chew & Sons Co., printing	6..	27.00
Oct. 11	Josiah White & Son, banquet	7..	673.50
Dec. 20	S. Chew & Sons Co., printing	8..	328.16
1907.			
Jan. 9	S. Chew & Sons Co., printing	9..	11.85
Apr. 16	S. Chew & Sons Co., stamped envelopes	10..	4.25
May 24	S. Chew & Sons Co., printing	11..	20.75
	Wm. J. Kraft, salary and expenses	12..	107.00
June 8	Charles H. Hartshorne, expenses special committee	13..	36.99
	Total disbursements		$1,798.07

RECAPITULATION.

Total cash received	$4,096.93
Total cash paid out	1,798.07
Balance on hand deposited in West Jersey Trust Company	$2,298.86

DELINQUENTS.

For the year 1903 there are delinquents	4
" " " 1904 " " "	8
" " " 1905 " " "	10
" " " 1906 " " "	15
" " " 1907 " " "	74

making the amount due the Association $555.00.

Respectfully submitted,

LEWIS STARR,
Treasurer.

At the conclusion of the reading of the Treasurer's report, the Committee on Admissions reported that since the last annual meeting they had admitted to membership the following gentlemen:

CLARENCE F. ALBERTSON,	CHARLES S. MOORE,
WILLIAM D. LIPPINCOTT,	HARRY R. COULOMB,
JOHN R. EMERY,	FRANCIS B. DAVIS,
THEODORE W. SCHIMPF,	WINFIELD S. B. PARKER,
GEORGE REYNOLDS,	WILLIAM T. READ,
LOUIS A. REPETTO,	HORACE F. NIXON,
EPHRAIM TOMLINSON,	LEWIS T. STEVENS,

G. DORE COGSWELL.

The reports of the standing committees were then called for and the Committees on Grievances and Law Reform presented their reports in writing, which, on motion, were ordered filed; the Committees on Prosecution, Legal Education and Legislation presented no reports.

Judge Charles V. D. Joline presented the report of the Committee on Legal Biography, which contained biographical sketches of the lives and services of Jonathan W. Acton, Wheaton Berault, Vice Chancellor Martin P. Grey, Edwin A. S. Lewis, Richard T. Miller and Paul T. Shinn.

On motion, duly seconded, put to vote and carried, it was ordered that the report of the Committee on Legal Biography be printed in the year book. *(See Appendix I.)*

Mr. Charles H. Hartshorne presented the report of the Special Committee upon the Judiciary Amendment, appointed pursuant to the resolution of the Association adopted on June 16th, 1906.

Vice Chancellor Bergen made a motion that the report of the Special Committee be received and the recommendation adopted, which motion, after some discussion, was carried.

Vice Chancellor Bergen then moved that the President appoint a committee, as recommended by the Special Committee, to be composed of such number as the President might deem advisable.

Mr. Edward M. Colie offered as an amendment that the President appoint a committee in accordance with the recommendation of the Special Committee, which committee should be composed of seven members, who might add to their number as they saw fit.

Vice Chancellor Bergen accepted the amendment, and the motion as amended, being put to a vote, was carried.

Mr. William T. Hilliard made a motion that the report of the Special Committee upon the Judiciary Amendment be printed in the year book, which was duly seconded, put to vote and carried. *(See Appendix II.)*

On motion of Mr. Charles H. Hartshorne, the President appointed the following committee, viz.: Charles H. Hartshorne, Charles W. Fuller, Charles V. D. Joline, Halsey M. Barrett and Willard P. Voorhees a Nominating Committee for the nomination of officers and directors for the ensuing year.

A recess of five minutes was then taken.

Upon the resumption of business the Nominating Committee made the following nominations:

For President, WILLARD P. VOORHEES.
" 1st Vice President, CLARENCE L. COLE.
" 2d " " EDWARD M. COLIE.
" 3d " " SAMUEL K. ROBBINS.
" Treasurer, LEWIS STARR.
" Secretary, WILLIAM J. KRAFT.

For Directors:

CHARLES C. BLACK, HENRY S. SCOVEL,
JAMES E. HOWELL, CRAIG A. MARSH,
JAMES J. BERGEN, WILLIAM M. JOHNSON,
ALLEN B. ENDICOTT, ISAAC W. CARMICHAEL,
JAMES BUCHANAN.

No other nominations being made the report of the Nominating Committee was adopted, and the officers and directors recommended declared elected.

There being no further business before the meeting, it was thereupon adjourned to 10.30 A. M. on the following day.

WILLIAM J. KRAFT,
Secretary.

MINUTES OF MEETING OF JUNE 15th

The meeting of the New Jersey State Bar Association was held in the Brighton Casino, Atlantic City, New Jersey, on Saturday, June 15th, at 10.30 A. M., and was called to order by the President, Hon. Gilbert Collins.

The President stated that the Committee on Legal Biography had omitted to include in its report an obituary upon the life of the late Justice Garretson, and after some remarks by the President and on motion of Mr. Richard V. Lindabury, it was ordered that the Committee prepare such notice and annex same to its report.

Mr. Eli H. Chandler called attention to the fact that Mr. Rodman Corson, a member of the Association, had recently died, and on motion, duly seconded and carried, the Committee on Legal Biography was instructed to prepare a minute regarding his life and annex the same to its report.

The President's address was delivered by Hon. Gilbert Collins.

Mr. Collins then left the chair, retired from the Presidency of the Association and introduced the new President, Mr. Willard P. Voorhees.

Mr. Voorhees assumed his office, took the chair and made a brief address, at the close of which he introduced Mr. Adrian H. Joline, of the New York Bar, who delivered an address upon "Certain Modern Tendencies."

Upon the conclusion of the address, on motion of Mr. Halsey M. Barrett, the thanks of the Association were tendered to the retiring President, Mr. Gilbert Collins, and Mr. Adrian H. Joline, by a rising vote, and it was ordered that their addresses be printed in the year book. *(See Appendix.)*

Mr. Louis H. Miller moved that the President appoint a committee of three to investigate the progress of the work of the commissioners appointed by the Governor to compile the Statute Laws of this State, which was duly seconded and carried.

There being no further business, the meeting adjourned.

WILLIAM J. KRAFT,
Secretary.

APPENDIX

President's Annual Address

DELIVERED BY

HON. GILBERT COLLINS

June 15, 1907

It has seemed to me that the annual address of the President of the Association should be practical in character, and I invite your attention to a few remarks concerning the Federal Courts. The subject is one that is neglected by nearly all students, in our State at least—perhaps because not within the scope of the bar examinations. The same thing is true to a large extent elsewhere.

After Benjamin R. Curtis resigned from the Supreme Court of the United States he was asked to deliver a course of lectures in the Harvard Law School upon "The Jurisdiction, Practice and Peculiar Jurisprudence of the Courts of the United States," and he did so during the academic year of 1872-3. His lectures were wholly oral and extemporaneous and were taken down in shorthand and afterward published. I commend the book both to the student and to the practicing lawyer. The lucidity of style and comprehensiveness of treatment of these lectures make the little volume more attractive than the voluminous works since published on Federal practice. Of course the reader must supplement that which he gathers from its pages by a perusal of the later statutes and judicial decisions. Let me quote what Judge Curtis said by way of preface:

"When I came to the bar, forty years ago, there were com-
"paratively few cases tried in the Courts of the United States.
"They were generally important cases, but they were few, and
"the number of practitioners engaged in those Courts was small.
"The practice was in the hands of a few leaders of the bar in
"the great cities or large towns where the Courts were held; gen-

"tlemen of the bar residing elsewhere did not trouble them-
"selves to acquire any knowledge, or they acquired but very
"slight knowledge, concerning either the jurisdiction or practice
"of those Courts; in truth they had nothing to do with them,
"except, perhaps, in some accidental way. Owing to the great
"increase in the wealth and population of our country, in its in-
"terstate as well as its foreign commerce, in the means of loco-
"motion, which have brought the different parts of the country
"so much nearer together, and in the value of patent and copy-
"rights granted by the United States, as well as, during the last
"ten years, the extension of the powers of Congress over many
"subjects previously left to the exclusive legislation of the States,
"and therefore left exclusively to the judicial power of the
"States,—owing to these and other causes, all co-operating, the
"business of the Courts of the United States has greatly in-
"creased; and these same causes are likely in the future to oper-
"ate with increased efficiency. You will readily understand,
"therefore, that a gentleman about to enter the profession who
"neglects to inform himself concerning the subjects of these
"lectures neglects to obtain important means of usefulness and
"success."

A generation has passed since these words were spoken, and yet, prophetic as they were of a great increase of the business of the Courts he was describing, the neglect he deplored still continues. This branch of legal study cannot longer be ignored and left is it largely is to an empiricism of the practitioner as his needs become emergent. At the time of the lectures there were but eighty-five volumes of reports of the U. S. Supreme Court; now there are more than two hundred. The "Federal Reporter" beginning only in 1880 now numbers one hundred and fifty large volumes of decisions of the subordinate Federal Courts. Recent legislation by Congress touching safety appliances and liability to employees—where common carriers are engaged in interstate commerce, together with the steady growth of removal of causes from State to Federal Courts on the ground of diverse citizenship and the increasing tendency where possible to go to those Courts in the first instance—make it imperative upon every lawyer

who hopes to hold his own among his brethren to thoroughly acquaint himself with their jurisdiction and practice.

I shall not speak to-day of matters of exclusive or conflicting jurisdiction, but only of general jurisprudence. The constitutional provision vesting in a Supreme Court and such inferior Courts as the Congress should from time to time ordain and establish, judicial power over controversies of citizens of different States was designedly made general. It was left to Congress to prescribe the methods of exercising that power.

The Judiciary Act of 1789 was a marvel of wisdom and simplicity, establishing the judicial districts upon state lines and expressly declaring the fundamental difference between legal and equitable proceedings which the constitution, as to private controversies, left to implication.

Equity jurisprudence, as administered by the Courts created, naturally followed the English model. In 1842, by an act, now Section 917 of the U. S. Revised Statutes, procedure in equity cases was made uniform under the authorization of rules adopted by the Supreme Court. Thenceforward a suit in equity has been the same in every part of the country. How important and even essential this is is apparent when we consider that in many States of the Union there is no separate equity tribunal, and the line of demarcation between legal and equitable remedies is shadowy and obscure. New equitable rights or remedies given by State legislation will be enforced by the Federal Courts, but according to their own procedure.

Common law actions were regulated, as to practice, by an Act passed in 1792 adopting the State practice then existing, but the next year Congress authorized the Courts to adopt their own practice by standing rules. Such rules generally were based upon the practice of the King's Bench.

On the merits of legal controversies it was wisely provided that there should be no clashing between the State and the Federal Courts. Nothing has been more productive of that harmony between two concurrent systems in the same territory that has been the admiration of philosophical foreign observers. The purpose of vesting in Federal Courts the decisions of contro-

versies between citizens of different States was not to build up an independent body of law, but to secure impartiality in the administration of law. Hence the Judiciary Act contains this provision, now Section 721 of the U. S. Revised Statutes:

"The laws of the several States, except where the constitu-"tion, treaties or statutes of the United States otherwise require "or provide, shall be regarded as rules of decision in trials at "common law in Courts of the United States in cases where they "apply."

As to substantive law within the range of State legislation this enactment was supererogatory; but in many important respects it limits judicial power that otherwise might have been much more extensive. Under this provision the constitution and statutes of a State, where applicable to a controversy, will be enforced by the Federal Courts, and in their interpretation the decisions of the highest Court of the State will be controlling. The same thing is true of the local and municipal law, though not embraced in statutes of the State in which the Federal Court adjudicates; but the provision is held not to apply to commercial law and general jurisprudence. As Judge Miller said in a famous decision, a Federal Court will not immolate truth and justice, although a State Court may erect the altar and demand the sacrifice. This exception to the general rule of conformity to the jurisprudence of the State in which a Federal Court is held is often the occasion for the exercise of sagacity by a suitor's legal adviser. An example of the thoroughness as a lawyer of the present Governor of New York once came under my notice, of which I may speak by way of illustration. The Court of Last Resort of New Jersey had declared its view on a subject of general commercial law. The Supreme Court of the United States had declared an opposite one. Mr. Hughes' client was a citizen of New York. If he were to bring suit in a Federal Court he would be defeated. If he were to sue in New Jersey the defendant could remove the action to the Federal Court with a like result. This was prevented by an assignment of the cause of action to a citizen of New Jersey, who brought the suit, and my client had to submit to the law declared by the Courts of his

State. His contention that the assignment was without consideration did not avail, for the Court held that to be no concern of a debtor. In passing, let me say that the converse would not have been true, for an Act of Congress provides that an assignee cannot sue in a Federal Court unless his assignor could have done so.

I have said that in Common law actions the Federal Courts made their own rules; but from time to time a great variety of statutes were enacted on this subject, all tending to conformity with the State law. Finally in 1872 came an enactment giving suitors in the Federal Courts the same remedies by way of attachments against property, execution of judgments and proceedings supplementary thereto that are given the State Courts and the following general provision, which Judge Curtis much deprecated and which he prophesied would be of short duration. The provision is now Section 914 of the U. S. Revised Statutes, and is as follows:

"The practice, pleadings and forms and modes of proceed-
"ing in civil causes other than equity and admiralty causes in the
"Circuit and District Courts shall conform as near as may be to
"the practice, pleadings and forms and modes of proceeding ex-
"isting at the time in like causes in the Courts of record of the
"State within which such Circuit or District Courts are held, any
"rule of the Court to the contrary notwithstanding."

The event has not justified the opinion of Judge Curtis, and yet an evil has resulted from carelessness of practitioners in losing sight of the differences that still exist. The provision quoted does not override United States Statutes, and where a given subject is embraced in an Act of Congress that and not the State statute must be followed. To illustrate, the form and mode of service of original process is uniform in the Federal Courts under statutory prescription, and the State practice, therefore, in that regard is not operative. So the great subject of evidence is dealt with by Acts of Congress, and those acts must be the practitioner's guide on that subject. Discovery before trial, inspection of books and papers and a variety of other matters ancillary to the trial of a common law action are regulated by

Acts of Congress. In short, it is never safe to rely on the State practice being applicable to actions in the Federal Courts until inquiry is made whether or not Congress has legislated on the matter in hand. Presumably State Statutes will be applicable—though Congress may have dealt with the subject—in so far as they afford distinctive remedial relief beyond the scope of the Congressional legislation, for the Federal Courts are eager to afford to suitors all the advantages that a State Court affords; but within the scope of such legislation it is exclusive. For example, the examination of witness *de bene esse* is regulated by an Act of Congress. Many States have more convenient methods with which the local bar is familiar. To render those available Congress in 1892 enacted that the State practice may be followed. Except for such enactment this would not have been possible.

An important limitation often lost sight of is that the State practice ceases at the judgment in the cause. Methods of review are those of the common law as modified by the Federal statutes. Hence, the New Jersey enactment that the taking of a rule to show cause why a new trial should not be granted shall be a waiver of exceptions taken at the trial except on points expressly reserved in the rule, does not prevail in the Federal Courts. Of course the judge may make the granting of a rule conditional on the waiving of exceptions; but if he grants a general rule the exceptions remain, and if the rule be afterwards discharged, are available on writ of error. So with regard to refusal of a motion to non-suit. In New Jersey that is ground for exception; in a Federal Court it is not. While theoretically there is perhaps no difference in the matter of direction of verdicts, yet practically the Federal Courts are far more liberal in sustaining a direction because the evidence is insufficient to support a contrary verdict than are most of the State Courts.

The natural limit of this occasion precludes my speaking more at length on this interesting topic. If I shall have succeeded in leading the members of the bar, and especially the younger men, who must take up the growing burden of our complicated commercial life, to a more thorough study of the jurisdiction and practice of the Federal Courts I shall be more than satisfied.

"Certain Modern Tendencies."

ADDRESS OF

ADRIAN H. JOLINE, ESQ.,

Before the New Jersey State Bar Association, June 15, 1907

The State of New Jersey has always enjoyed and fortunately continues to enjoy the reputation of being judiciously conservative in her policy and in her legislation. As a citizen of New Jersey, although it is not my privilege to be a member of your bar, attached to her by college affiliations, by ties of ancestry, and by some familiarity with her history from colonial times until the present, I venture to take pride in the belief that she is the one State in the Federal Union which has understood how to preserve the sane and sound traditions of the founders of our republic, while adapting herself sanely and soundly to the needs and requirements of the ever-shifting and changing conditions of the age, to the wonderful development of our national prosperity, and to the demands of a growing and expanding civilization. As we look over the broad field of American life we discern here and there the evidence of haste and impatience, of much careless yet honest ignorance, of an eager and restless desire to make things better without an intelligent comprehension of the right methods of accomplishing the result. We see many with an ill-defined idea of doing something to remedy some supposed wrongs, groping about for a panacea; but we find also that in your State there has always been a leaven of rational thought which has kept her people from straying into the paths of foolishness. I do not mean that in your politics you have been wholly exempt from some of the evils which seem to be inseparable from politics of every kind. I do not mean that every act of legislation or every omission to legislate has been undeserving

of criticism. I mean that New Jersey is and has been one of the most prudent and judicious of all our States in the treatment of the rights of person and of property for whose protection and preservation all governments are created, and that beyond all others she has united a wise conservatism with a due recognition of the necessity of reasonable progress. I verily believe that she owes her predominance in this regard, as well as her peaceful prosperity, largely to the trained and sagacious minds of her lawyers and her judges, who have not only a national but a world-wide fame.

When I had the honor of receiving your invitation to address you at this meeting, an honor which I am frank to say I esteem to be as great as any lawyer might well expect to receive, and when I was considering what I could hope to say to you which might in any degree be worthy of your attention or which might reconcile you to the relinquishment of the manifold attractions of this pleasant place in order to listen to the speaker whom your courtesy leads you to treat with a polite appearance of interest, however thankful you may be when he concludes his remarks, I decided to avoid any technical dissertation on the delights of contingent remainders, or the joys of quasi-contracts, or the exciting incidents of foreclosure suits, or the exhilarating features of arrest on mesne process; to abandon such topics to the *Harvard Law Review* and the other excellent law magazines whose profound and exhaustive articles I usually hurry over in order to get to the gossip on the final pages; and that I would say a few words about certain modern tendencies which to old-fashioned lawyers, as well as to some who are not particularly old-fashioned, but who believe in those rules and standards which we may not abandon without disaster, appear to be dangerous to the true welfare of our countrymen. I have never been convinced of the truth of the saying that the voice of the people is the voice of God. I do not believe that it is always the voice of wisdom or that it is always the voice of folly. Its tones are often full of harmonious music but just as often of discordant cacophony. The best of us make mistakes, and the people's voice sometimes embodies an aggregation of mistakes as it frequently

expresses undeniable truths. Let us be reasonable about it, and without condemning harshly the popular judgment because it may not happen to agree with our own, let us not hesitate to consider quietly and dispassionately some of the current manifestations of popular feeling.

The distinguished Governor of the State where I practice my profession—he is a lawyer of great attainments and wonderful sagacity—said a few weeks ago in a speech at Buffalo, that we cannot inveigh against the decision of the people and that we must submit to the popular will. I regard that utterance as mistaken and I was surprised to hear it from a man of the strength and the courage which I know is his, for it is the duty of a good citizen who possesses a trained and effective intellect to use his power to direct the untrained masses. They look upon such men as he to be their real leaders, to think for them, to save them from error, to tell them what they ought to do, except those "undesirable citizens"—and I thank the President for the word—who have imported into our land the lawless and anarchistic passions born of a decayed or of an imperfect civilization. Our people are always ready to be guided to safe harbors by pilots in whom they place their trust. If they go wrong it is mainly the fault of the men who have the capacity to influence them. No country which enjoys the dubious delights of universal suffrage is devoid of demagogues. I dare to say that Abraham Lincoln was a leader of men, who was never a demagogue; that Grover Cleveland, our fellow citizen of New Jersey, was and is a leader of men, but never a demagogue; and by a demagogue I mean an unprincipled popular orator or leader, one who endeavors to curry favor with the people or some particular portion of them by pandering to their prejudices or wishes or by playing on their ignorance or their passions.

One of the tendencies which I have in mind and which characterizes our American thought is the tendency to over-legislation. I am aware that our legislative bodies are in some measure supposed to be representative of the people—native born, foreign, red, black, brown and white, only the yellow being excluded. We are all equal in theory; equal, I mean, in natural political

rights, for we know that a cultivated New Jersey lawyer is not in any respect precisely the equal of a cotton-plantation hand in South Carolina or of a hoodlum in the purlieus of New York. We are all equal politically, whether or not we understand the principles of the Constitution, or can write our names, or have the requisite intelligence to make our mark opposite to the name of the man for whom we wish to vote. Some skill is needed to vote the ballots which the disinterested and broad-minded legislators of New York have devised in order to make it difficult for any one to vote for any but the machine nominees. That, I venture to think, is a part of the game of politics, the delusive humbug by which the people are fooled some of the time but fortunately not all of the time. Acts of legislators thus chosen are theoretically dictated by the divine will, yet oh! how divine it is! It speaks to us from a serene empyrean of exalted rectitude. I may perhaps be allowed to assert with some temerity, that in the forty-five legislatures of our several States and the parliament which from time to time assembles within the shadow of that great White House whence emanates the effective influence of Executive suggestion, there may be discovered now and then some things which impair our confidence in their sublime wisdom and absolute infallibility. Let us clear our minds of cant, as Doctor Johnson said, and not be blinded to facts by any affectation of delusion and acquiescence about the people who make our laws. There are many worthy men among them, but what good as a rule do they practically accomplish? We must recognize the futility of much of our Federal legislation as well as of our State legislation. Consider the multitudinous bills introduced at every session, and remember in the haste and hurry of a session in which politics figures to the extent of almost ninety per cent., how much intelligent and disinterested attention is given to any single business measure! Yet our people appear to indulge in the belief that men may be made virtuous by legislation, that the inconveniences which may be caused to many by the operations of the ordinary laws of political economy may be obviated by statutes enacted at Topeka, and St. Paul, and Harrisburg, and Albany. Our statute books, every word and line of

which are presumed to be known by our citizens, teem with enactments so minute and so far-reaching that no man may lay his innocent head upon his innocuous pillow at night with any assurance that he has not in the preceding day rendered himself liable to heavy fine and prolonged imprisonment. We are cursed with too much legislation. In New York, our Code of Civil Procedure is a book almost as huge as one of those with which the voluminous William Prynne oppressed his contemporaries two hundred and fifty years ago. Our law libraries groan under the weight of the countless tomes of statutory law. If time permitted, I would give you examples of the infinite number of silly and ill-framed laws each year turned out of the mill of legislation. We are afflicted with statutory mania. Think of a bill gravely introduced in a western legislature punishing mothers who do not nurse their children for a prescribed period; think of a bill regulating the length of the skirts of stage performers. The marked vulgarity of such measures, gravely proposed, these examples of freak law-making, speak to us forcibly. They are by no means as harmful as others which relate to serious problems of life and of business. Legislation should be broad and general; it should not be degraded by dealing with minor things. These should be left to other tribunals. As one of the clearest minded and soundest lawyers of New York said recently in an address before the Niagara Falls Board of Trade: "In actual experience, the multiplication and the confusion of statutes proposed to render unlawful, procedure sanctioned by previous custom, are so great that to maintain 'law honesty' may require intellectual acumen and moral fortitude such as may be supposed to have enabled Minos of Crete to administer justice not only upon earth but in the regions under the earth."

Another tendency, one of the most important and significant, I think, is that which has not only been observed by every one of your Association and by every lawyer in the land, but has been the occasion of serious reflection and grave anxiety among those to whom the Constitution of our country is an object of reverence and not of ridicule. I mean the tendency to minimize the influence and powers of the States and to increase the

scope and power of the Federal Government; what in the Democratic platforms of forty years ago, which are so unlike the Democratic platforms of later days, used to be called "centralization."

To us of the twentieth century, who are familiar with Acts of Congress dealing with employers' liabilities, regulating the affairs of railways and railway rates on interstate commerce, providing for the inspection of meats imported in the course of interstate or foreign commerce, prohibiting the manufacture or sale of adulterated or misbranded foods or drugs, and prescribing rules for the comfort and welfare of animals in transit, the controversies of days long gone by as to the power of Congress to create a bank or to legislate with respect to internal improvements seem curiously antiquated and futile. In Jackson's once famous veto message disapproving of the bill authorizing a subscription to the stock of the Maysville, Washington, Paris, and Lexington Turnpike Company, he said, referring to the power to construct or to provide works of internal improvement: "Although frequently and strenuously attempted, the power to this extent has never been exercised by the Government in a single instance. It does not, in my opinion, possess it, and no bill, therefore, which admits it can receive my official sanction." How hopelessly narrow and illiberal such an utterance must seem to those who to-day are contemplating the ownership or control of all the transportation lines of the country by the Federal authorities, finding the justification in that paragraph of the Constitution which grants to Congress the power "to establish Post Offices and Post Roads!"

Indeed the President, on Decoration Day, publicly announced, in reference to common carriers, this amazing proposition: "It is *in my opinion* probable that whether their business is or is not interstate, it is to the same extent subject to Federal control, under that clause of the Constitution granting to the National Government power to establish post roads and therefore by necessary implication power to take all action necessary in order to keep them at the highest point of efficiency." Was there ever a more absurd and revolutionary utterance? His

opinion, forsooth! If it were true, the National Government could lawfully seize upon every foot of highway in the State of New Jersey and every street in the City of New York. It is worthy of note that this modern invention proceeded in the first instance from the brain of a Southern Democrat.

The man who is familiar with our history will naturally observe that the predominance of the several States in regard to the affairs ordinarily within the scope of their sovereignty, so marked and pronounced in the early period of our development, began to diminish seriously over forty years ago. The flaming sword of the civil war severed the latest century of America in two unequal parts and its fiery blade divided the old and the new as surely and as cleanly as the glittering axe of the guillotine cleft apart the France of the old monarchy from the France of modern times. Since 1865 the power of the Federal government has grown without a check. The profound student of the American Commonwealth, whom we have recently so gladly welcomed as the honored representative of the Empire of Great Britain, in that wonderful treatise upon our institutions which for breadth of view and comprehensive accuracy will never be surpassed and will probably never be equalled, told us calmly and impartially, nearly two decades ago, the underlying reasons for this centralizing tendency which, after all, has been manifest almost from the beginning of our independence as a nation. It is useless to attempt to paraphrase his wise utterance, but I may be permitted to quote what he said of the efficient causes. He reminds us that the constitutional amendments adopted soon after the close of the war of the Rebellion were significant, but that they were by no means the principal manifestation of the tendency towards the making over of our Union into a single nation. "It has been due," he says, "not only to those amendments, but also

"To the extensive interpretation by the judiciary of the powers which the Constitution vests in the National Government.

"To the framing by Congress of statutes on topics not exclusively reserved to the States—statutes which have sensibly narrowed the field of State action.

"To exertions of executive power, which having been approved by the people and not condemned by the courts, have passed into precedents."

When we remember the conditions which prevailed when Mr. Bryce wrote those words, and then consider the situation as it is to-day, we must be convinced that this country has made great strides of late towards the destruction of our States as separate entities and the merger of all the powers of government, other than mere local police and taxing powers, in the Legislative and Executive branches of our Federal government. There are excellent and conscientious men whose integrity and patriotism I would never question, who believe that our welfare demands the aggrandizement of this Federal power, on the strange and peculiar theory that as the States will not do their duty to the community by independent action, the aggregation of the representatives of these recalcitrant and ineffective States will do better. Let me say that the very fact that the States do not see fit to make laws which in the opinion of the centralizers are required by the exigencies of the time is a very convincing argument that the legislation those centralizers demand is not good for the States and hence not good for the people. What Montana and Wyoming may demand may not necessarily be good for New York and New Jersey. The builders of the Constitution understood this fully; and that was the reason why they framed our organic law so that each State should have the exclusive right to decide upon all questions except those which were absolutely federal in their nature.

The eminent and brilliant lawyer who worthily occupies the seat in the Cabinet which was filled by Jefferson, by Madison, by John Quincy Adams, by Marcy and by Seward, told us not long ago that as the States have failed to do their duty, the national government may be compelled to usurp their functions and find a remedy for the evils which the States have failed to check. I am not vain enough to assert that my own qualifications to pass upon the question may for a moment be compared with his, for no man admires or respects more than I do the qualities which made Elihu Root a leader of our bar even in the

days of his young manhood. But my conscience and my sense of duty as a lawyer, as I see that duty, compel me to protest against his implied threat of annihilation of the rights and the prerogatives of the States. No student of our Constitution or of our political history can fail to see that the obliteration of our States would be a defiance of every principle which the men who formulated our fundamental law regarded as essential to the preservation of the rights and liberties of all citizens. Let our Secretary of State say, if he will, that he regards these principles as fraught with error; that they should be abandoned. Let him have the courage to declare his position, but he must not seek to evade the conclusion which results from his argument. As I read his address to the Pennsylvania Society delivered in December last, he adroitly avoids an open advocacy of the policy of increasing Federal domination, but would convey the impression that he merely warns us of a tendency which no human power may successfully resist. I am not as sure as he is that the tide may not be stemmed if brave men are willing to exert themselves in the work of stemming it.

He says in substance that the tendency to centralize is due to three principal causes: the growth of national sentiment; the knitting together of the people by commercial reasons; and the development of interstate communication. Very true, no one contests these obvious truths. The most alarming conclusion which he draws from his premises is this: referring to the control of government over the affairs of the people, he says: "It may be that such control would better be exercised in particular instances by the government of the States, but the people will have the control they need, either from the States or from the National Government; and if the States fail to furnish it in due measure, *sooner or later constructions of the Constitution will be found to vest the power where it will be exercised—in the National Government.*" If this means anything, it means that the very object and purpose of our Constitution is to be defeated. It means that If New York and New Jersey for example do not legislate as Utah, and Nebraska, and Idaho, and all the raw States of the West want them to legislate, if a majority of the

citizens of the West and of the South demand something which seems to the Middle States and to New England to be undesirable, we are to bow to the dictation of our fellow States because they may happen to have a majority of votes in the Capitol at Washington; or that if the States do not obey the edicts of the Administration, the power of the Federal government, exercised through subservient judges appointed by a dominating Executive, will be used to distort and to misinterpret the supreme and fundamental law. I own that I despair when I read such words, the utterances of a true and clear-minded professional brother, and comprehend his meaning, which is that the Constitution may be twisted to suit the purpose of those who seek to destroy its efficiency. It grieves me to believe that a lawyer, always mindful of his duty and his obligation to his fellow-men, should even hint at the possibility that such a body as we like to think the Supreme Court is, may be induced by fanciful exigencies of the moment to resort to forced and artificial constructions of the Constitution in order to cure supposed troubles which on close examination may be found not to be troubles at all. It means that a written Constitution such as we have had and enjoyed for more than a century is to have no force because its provisions may be rendered null by "construction." If this be law, we might as well be relegated to the situation of those whose statutes were inscribed upon tablets placed so high that none could read them.

It may be asked why, in the face of modern problems which are so different from those which confronted our people in the days of Hamilton or of Jackson, we should not let State Rights go and substitute for the government devised by our fathers, a new one devised by the progressive statesmen of to-day. One reason is that we should be bound by the written law and by the construction of it which has prevailed since our life as a nation began. Let us not attempt to fritter away the substance of our Constitution. If it needs amendment, let us amend it in the true way; but we must not seek to warp its meaning or to make it of no worth by false interpretations. If it is old-fashioned to believe that the Constitution is sacred; that there is "a paramount obligation upon all to abide by the compact so solemnly and, as

it was hoped, so firmly established" when it was adopted, and to resent the suggestion that its provisions may be made of none effect by strained and unnatural "constructions," then—if that, I say, is old-fashioned, in the words of Patrick Henry about treason: "make the most of it."

Another reason is that the modern view of our Constitution and of its sane provisions defies all the principles of our government as it has existed from the beginning. Our ancestors were scrupulously careful to maintain a system of checks and balances, designed to prevent the growth of a tyrannical supremacy in any department. Congress, the Executive, the Supreme Court, were all to be checks one upon another. John Marshall, dominating the lesser minds of his day, masterfully made his court the ultimate arbiter of all questions arising under the Constitution, the superior of both President and Congress. Fortunately that supremacy, not without an element of danger, has thus far brought no peril to the republic because of the high patriotism and lofty character of most of the men who have obtained the honor of a seat on the bench of the most powerful judicial tribunal in the world. It is my belief that the Federal Courts, whose manifest excellence has been demonstrated by the honored President of your Association, have been the bulwarks of our land and have saved us from ruin, fearless and conscientious as they are—fearless of popular clamor and calmly resolved to decide every question before them in accordance with the true principles of law. They are the safeguards of this republic, the judges not dependent on popular elections, and therefore free from the fear of the mob.

But the States also were intended to be checks on the exercise of federal power as well as upon each other. The astute statesmen who with calm deliberation and thoughtful care formulated the Constitution were mindful of the necessity of putting curbs on each department. They comprehended the danger of executive domination, but they manifestly did not realize the peril of legislative tyranny. We are now threatened not only with concentration of power in Washington City, but in a single department of our government.

"It is important, likewise," said a notable personage over a century ago, "that the habits of thinking in a free country should

inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield." These words of Washington, in that Farewell Address which has become a political classic and is therefore practically unread by this age, which despises classics and prefers journals of a certain description, are almost prophetic, forewarning us of the danger, not only of centralizing power in the Federal government, but of centralizing it in any one department. The men of that time were profound students of mankind, they were careful and laborious students of civics. They were not superficial, but they thought and reflected, and whatever the changes of conditions due to the material progress of the day, the nature of man has changed but little, if at all. The wisdom of Plato and of Socrates and of the great sages who truly read man's heart is as unerring to-day as it was when Critias and Alcibiades stood in the place of the Root and the Roosevelt of this generation. Our ancestors knew not

the railway, the telegraph, or the telephone, the marvellous results of the development of the powers of steam and of electricity, but they knew men, the failings as well as the virtues of men, and they strove to protect us against our own liability to error and mistake. I do not think that we may lightly regard the views or the testimony of Washington.

There is another witness, who has been the subject of adverse criticism by the whig and the New England historians, but he was a mighty man and a staunch patriot, whose name has stood for years as a symbol of Democracy. In his Message of December, 1834, Andrew Jackson said: "To suppose that because our government has been instituted for the benefit of the people it must therefore have the power to do whatever may seem to conduce to the public good, is an error into which even honest minds are too apt to fall. In yielding themselves to this fallacy they overlook the great considerations in which the Federal Constitution was founded." Then come these significant words: "In addition to the dangers to the Constitution springing from the sources I have stated, there has been one which was perhaps greater than all. I allude to the materials which this subject has afforded for sinister appeals to selfish feelings and the opinion heretofore so extensively entertained of its adaptation to the purposes of personal ambition."

Jefferson declared that "our peculiar security is the possession of a written Constitution, not to be made a blank paper by construction." Daniel Webster, the man who did more to cement our Union than any one man did after the founders and before the civil war, said: "I will not blindly confide where all experience warns me to be jealous. I will not trust executive power vested in the hands of a single magistrate, to be the guardian of liberty." And Abraham Lincoln, that keen, far-seeing and admirable statesman, added his testimony when he uttered these words: "It is my duty and my oath to maintain inviolate the right of the States to order and control under the Constitution their own affairs by their judgment exclusively. Such maintenance is essential for the preservation of that balance of power on which our institutions rest." It may be that to most of you

all these citations are trite and stale; but when I reflect upon what is going on in our country from day to day, it seems to me that it is not amiss to repeat them lest by their very triteness they may become meaningless and may disappear in the abyss of the forgotten.

The founders were careful to adopt measures by which they intended to guard against the domination of a President; but as I have said, they appear to have been rather over-trustful with respect to the wisdom and discretion of their legislative creations —the Senate, representative of the States; the House, supposed to be representative of the people. Yet it must be manifest to all that they had no idea of giving to Congress the enormous powers which in late years that body has exercised, sustained by some of those "constructions" which our Secretary of State seems to think may be so broadened hereafter that there may be little left for the States to do. Surely there must be prerogatives of the States; they must have some serious purposes to fulfill, and it cannot be that by any ingenuity of interpretation their governments are to be reduced to a level with Boards of Aldermen and County Supervisors. Years ago that thoughtful scholar, Professor Jameson, called our attention to the fact that nearly all the great questions which had agitated England during the preceding sixty years would, had they arisen in America, have fallen within the sphere of State legislation. But to-day it is regarded as the natural and ordinary method to bring every measure affecting the general welfare of our people before the Congress of the United States, and the Congress, not always confident of its own capacity or mindful of the constitutional restriction of its powers, usually deals with the problems it is unable to solve by giving us what a distinguished lawyer, in a valuable contribution to the *North American Review,* recently denominated "government by commission." It has given us an Interstate Commerce Commission which now possesses powers scarcely yet defined or limited. Under the broad construction of the Interstate Commerce clause of the Constitution we may yet have a Tariff and Revenue Commission, a Marriage and Divorce Commission, a Food Commission, a Woman and Child Labor

Commission—in short, commissions to manage or regulate every conceivable business or subject—all the members to be appointed by the President. I confess that the prospect is one which to me appears to be full of peril. We may not always have Presidents whose intellect is omniscient and whose judgment is infallible. As was well said by Judge Willard in *Barto vs. Himrod, 8 N. Y., 483,* "If this mode of legislation is permitted and becomes general, it will soon bring to a close the whole system of representative government which has been so justly our pride."

Only a short time ago it was sought to bring all Life Insurance Companies under the supervision of the Federal Government, upon principles which apply substantially to all the business of the country. While I entertain the utmost respect for the character and ability of the author of that measure, I am wholly unable to comprehend how he could suppose that such a measure was constitutional. The unanimous sentiment of the lawyers of the House of Representatives was strongly adverse to the bill, and it failed, although it must be admitted that it was not much more in conflict with the organic law than are many of the Acts of Congress which have been vouchsafed to us in recent years. We were saved from it almost by a miracle. A written constitution is not unlike the fabric of a great ship, and when once it is strained by violence and the seams are parted, the floods pour in and it is soon swallowed in disastrous shipwreck.

It had always been my belief that the cardinal principles of our democratic form of government were that the rights of every individual in respect to his person and his property were sacred; that it was needful in order to preserve those rights and to insure social order, that certain authority should be delegated to persons representative of the mass of individuals; and that their selection should be determined ordinarily by the voice of a majority of the voters, not because they are necessarily wiser than the minority, but because that is the natural and obvious way of deciding upon the choice of the administrators of the law; and that those administrators should be guided by and subject to the law as embodied in a written constitution, whose pages should be exposed upon the tablets where all may read and understand.

I had always believed also that the best government was that which interfered the least with the liberty of the citizen, having regard to the natural rights of man and to the proper relation of each man toward his fellow-men. I observe to my regret that in our generation such ideas are fast disappearing. The tendency is to carry the idea of majority control to such an extreme that the rights of those individuals who are unfortunate enough to be of the lesser number are not only subordinated to the claims of right asserted and maintained by the majority, but they appear to be in danger of destruction. That there are evils connected with the exercise of universal manhood suffrage almost every fair-minded person will admit. It is obvious that these evils are increased by the efforts of a certain class of political adventurers as well as by the clamor of a certain class of journals. There is a peril in this which is more threatening than any other which confronts us. I do not fear that we are to have an emperor, unless it may become necessary to acquire one in order to save us from something worse; I am much more apprehensive of the rule of what I may call, I think, without censure, the mob. I mean a mob composed of such men as those whom last autumn I heard as they breathed out their hatred of the well-to-do in exalting the virtue and nobility of a certain candidate for office in the State of New York. I mean a mob made up of such creatures as those who have a little territory in a great city not far distant and who assert and believe that the way to destroy this government of ours is first to destroy the influence of the Christian religion among us, and are working to that end with secrecy and with system. I mean a mob like that which a few weeks ago paraded the streets in order to proclaim the innocence of men on trial for a capital crime in a Western State, not because of any facts or evidence, for they were too ignorant to pass judgment on the facts even if they knew them, but merely because they were so-called "labor men." Such people are no better than the anarchists who years ago suffered the penalty of their murderous crimes in Chicago. I am not a follower of the man who now fills the chair of Washington, of Jefferson, of Lincoln, and of McKinley, but I could not help feeling a thrill of admiration of his courage

in defying those who seek to impede the regular course of law and justice and who seem to believe that they can make a civilized community give to any class of citizens immunity from trial, or from punishment if they are found guilty by a jury of their countrymen. There is an arrogance of the rich, but there is just as offensive an arrogance of the poor. They are indeed unworthy and undesirable citizens who are unwilling to submit to the decisions of courts or to the judgments of arbitrators.

Our government ought to preserve social order and to guard the rights of every citizen, whether rich or poor, without favor or discrimination. I do not believe that because a man is poor he has any greater right to have his person and his property protected than has the man whose thrift and industry, whose brains and skill, have made him prosperous. Both have the same rights. But we cannot close our eyes to the truth that out of the tendencies to over-legislation and to concentration of power in the central government has developed a tendency not so much perhaps to imperialism as to socialism, which, as I understand it, is a theory or system of social organization which would abolish entirely or in great part the individual effort and competition on which modern society rests and substitute for it co-operative action, which would introduce, as its advocates believe, a more perfect and equal distribution of the products of labor and would make land and capital, as the instruments and means of production, the joint possession of the members of the community. In England, we cannot fail to observe that the drift towards socialism is even more marked and threatening than it is in this country; but we are following fast. The theme is one inviting extended discussion which time does not now permit. It is apparent to me that, considering the nature of man, socialism is the triumph of the idle over the industrious and annihilates individual excellence. The trend of recent thought is either towards socialism or towards imperialism, and I own that I rather like imperialism best. We may deal with one tyrant better than with eighty million tyrants. But it would be a sad thing if a nation whose genesis was an ardent longing for personal and individual liberty should fall a victim either to the theory that there was

only one man fit to rule us, or to the theory that dwarfs the individual and makes the industrious work for the lazy and inefficient. Our friends of the laboring class, who are victims of the delusion that "labor" means only what may be done by the toil of the hands and with the sweat of the brow, must learn that without the employer's labor the hands would work and the sweat would pour in vain. They are dependent upon the skill and the mastery, the knowledge which is power, which belong to the men who have the intellect, the initiative, the grasp of the serious problems of modern life which enables them to devise and to create great enterprises. It is an ancient truth that the laborer is necessary to the employer, but that the employer is just as necessary to the laborer. This is so obvious that it is almost an impertinence to assert it. Take for example the railways of this country. They have made it the wonderfully prosperous land it is, and across our broad possessions their builders have traced the interwoven lines of shining steel which have made us the fruitful creators of wealth and the powerful purveyors of the world. They could never have been built if some men had not possessed greater knowledge, wider foresight, and more courageous energy than most of their fellow men possessed. Yet in these days, the organized unions, the combination of those who never created but only serve, do not hestitate to obstruct the operation of the essential instrumentalities of trade and commerce, to defy the rules of law and justice, and even to destroy the prosperity of whole communities, not hesitating to resort to acts of violence in order to compel the public to yield to their imperious demands. Within a year one of those leaders who has succeeded in gaining eminence among his order proclaimed that the time had gone by to approach the railroad with hat in hand, and that "we will go to them *with the sword.*" The same person later on, when questions arose between the unions and a large number of the western roads, refused to submit the matter to arbitration until forced to yield by the power of the public officials. It is interesting to reflect that but for the ability and ambition of the men who "took the chances," devoting their lives and their fortunes to the upbuilding of the continent, this agitator might not now be able to earn a decent livelihood.

I observe that in one of his recent lectures at Yale University, Mr. Root uneasily treats of socialism as a menace, and incisively tells us that "after many centuries of struggle for the right of equality there is some reason to think that mankind is now entering upon a struggle for the right of inequality." You and I know what he means; but I firmly believe that in his plea for extended Federal power he has without intending so to do merely played into the hands of those whom he fears; for as we will never have an empire of one man, the consequence of concentration will surely be the empire of the proletariat. There is no escape from it, men of the sovereign State of New Jersey. It may not come in your time or mine, but it is bound to come if you and I yield to the current and make no effort to turn back the wave of imperious populism.

My eyes are not blinded to the fact that the misconduct and the misdeeds of corporations and of some of the accumulators of enormous wealth are largely to blame for the prevalent spirit of antagonism and hostility against all organized capital. It cannot be denied that in the recent years of what may be called marvellous multi-millionairism there has been a miserable maximum of grab, graft and greed. The perpetrators of these wrongs are justly subject to censure and they are as dangerous foes to real prosperity and to legitimate business as are those reckless and blatant labor leaders who stir up otherwise innocent and simple minded men to deeds of violence and brutality. But in the endeavor to rebuke the misconduct of those who are called capitalists there is an utter lack of effort to rebuke the misconduct of their assailants, and a contemptuous omission to discriminate between the good and the bad. Those corporations who do the best they can to serve the public, without resorting to reprehensible methods of finance and to unjust discriminations among their patrons, are all mingled in the hotch-pot of criminality; and the public is induced to believe that all corporations and combinations of capital are hostile to the true interests of the nation.

As an illustration of the lack of intelligent understanding of corporation and railway problems exhibited by the populace and their spokesmen, permit me at the risk of tediousness to refer

briefly to the matter of rebates and of passes, the giving whereof has been the occasion of the loudest outcry against the alleged sins of our railroads. To read the childish columns of our saffron-hued journals, to hear the word-slush of our legislators, and to heed the babble of our demagogic executives, State and National, the worthy citizen, devoting his time and energies to his own business and content to allow the politicians and the newspapers to manage everything else, would naturally suppose that the railroads were insanely enamored of rebates and that they lived, thrived and waxed fat upon them. Nothing could be farther from the truth; rebates are ruinous to railroads and benefit only the shipper, who pays no penalty under our wise and lucid laws, while the victim is forced to pay a substantial pecuniary tribute to the virtuous demands of our law-makers. No rational being can possibly believe that a vendor delights in the sale of his goods to one customers more cheaply than to another. He would surely welcome the enactment of a law forbidding him to discriminate to his own disadvantage. Hence our railway officials do not weep at the prohibition, although they may justly complain that they are condemned as the sole offenders. It is true that in business no one ever thought that there was any grave moral turpitude in receiving a smaller compensation from a wholesale purchaser than from a mere retail buyer. Be that as it may, you may comprehend the ghoulish glee with which a railway corporation obeys the law by making everybody pay alike.

It is not otherwise with regard to the less important question of passes. The demand for free transportation is always a nuisance to railways, for they are not passionately fond of carrying passengers free, and the practical blackmail to which for long years they have been subjected by all sorts and conditions of politicians, editors, and other disinterested champions of the dear public, has never been to them a source of unalloyed delight. Yet, to credit the utterance of the shallow seekers after public favor, one would imagine that the anti-rebate and anti-pass legislation was a stern rebuke administered by a conscientious body of patriots, not to the takers of rebates and passes, but to the unhappy persons from whom they were exacted, who, for-

sooth, are guilty of serious crimes because they unwillingly submit to extortion. Like most of the other crimes charged against corporations, when they are reduced to their last analysis you will find that the real thieves are those who most vociferously do cry "Stop thief." I fear that a manifest modern tendency is to be deluded by humbugs.

Returning for a moment to the labor unions, let me not be understood as saying that they are all deserving of blame or that all those who advocate socialism are devoid of conscience; far from it. There are useful and honorable unions, careful not only of their own just rights, but of the welfare of the community. I name no names, but there are leaders who try to do what is just towards both employee and employer, and it is generally a question of leaders, for the main body of the men will work without disorder if their leaders will leave them alone. The trouble comes chiefly from the ambitious chiefs who aim to utilize the innocent workingmen in order to foster their own selfish ambitions. It is unfortunate for the public, because I tell you it can be demonstrated that the majority of railway accidents in this country are due to the relaxed discipline resulting from the labor-union tyranny. A railway force is like an army and if the privates are allowed to dictate to their officers, there is nothing left for that army but utter disorganization and ignominious defeat.

What is our duty? What are we to do about it? Many years ago an English statesman, when the right of suffrage was extended, remarked philosophically, "Well, we must educate our masters." That is our duty, brother lawyers. We must do our best, although we will be working under serious disadvantages. I have alluded to the power of the press, and it cannot be denied that the lawless in this land have been most efficiently aided by the enormous influence of a particular sort of reckless and irresponsible newspaper. Let us not blink at the truth or be cowards about it. Decent people shiver timidly before the modern Minotaur of unscrupulous journalism. There are hosts of excellent newspapers all over this country, and they try to be fair and they *are* fair, and they are among

the greatest instruments which Divine Providence has used in carrying forward our country to her lofty place among nations. Such journals as the *Galveston News,* for example, have by their clear and sensible editorials done a great work in convincing the Texas Legislature of the folly of the two-cent rate bill—an unreasonable measure—and I am glad to testify to the good sense and wisdom of such newspapers whose managers perceive clearly that the grand State of Texas, a noble empire in itself, needs development of her railway facilities in order to make her what I believe she is destined to become, the leading State in the Union. I have in mind only those compendiums of falsehood and crime whose columns are crowded with the sickening details of robbery, adultery and murder, mingled with lies about our fellow-citizens, public and private, assaults on all that is decent and honorable, the very embodiment of absolute vulgarity. Yet, they have a mighty influence. The night before he sailed from this country to his own sorely tried land, that astute Russian, Count Witte, fresh from his diplomatic victory at Portsmouth, said to an eminent man in New York, "You call this a free country, but it is not free. Your land is not as free as mine. You have a master, and that master is of greater authority and of more potency than the Emperor of Russia. The newspaper is your ruler." He was right, and to-day our most dangerous force, which has done more than anything else to foster vile passions, to disseminate error, to stir up heresies, and to divide our people into classes, arraying class against class, is what we commonly called "the yellow press," the yellow peril before which an oriental invasion fades into insignificance. Any malicious person who contrives to get hold of a printing press has the power to mould public opinion, because to the mass of readers print means proof. The man who buys a Hearst newspaper for a penny reads in its columns no matter what absurd falsehood—it is truth to him and upon the lie he bases his judgment and determines how he will cast his ballot. He must be reached somehow, he must be undeceived, and we must bring him to his senses.

Between the capitalists and the actual and incipient socialists a vast number of our citizens, the bone and sinew of our

people, occupy a place of moderation. They are honest, hard-working, useful men, whose minds are frank and open and who are always ready to listen to the voice of reason. I put my trust in them, but let us not hesitate to address to them the words of sound counsel which I know they will hear and welcome. It is our right and our duty to urge upon them the necessity of calm consideration and serious, sober-minded reflection, of declining to yield to the clamor of self-seeking politicians or to the outcries of sordid and sensational newspapers, flippant creatures of the hour, who care nothing for the true welfare of the commonwealth and think only of the ephemeral success of the moment. I have a proud confidence in the good sense and the patriotism of our real people, and hence, while I cannot resist a sense of anxiety and of apprenhension, I still believe that our government as it is to-day, as we have loved and cherished it with pride and enthusiasm, the most free and beneficent which has appeared upon earth, will yet endure, unharmed, uninjured, and unstained, till time itself shall be no more.

APPENDIX I.

APPENDIX I.

REPORT OF COMMITTEE ON LEGAL BIOGRAPHY.

ATLANTIC CITY, N. J., June, 1907.

To the New Jersey State Bar Association:

GENTLEMEN:—Your committee on Legal Biography presents its report, which is hereto appended.

CHARLES V. D. JOLINE,
For the Committee.

In Memoriam

JONATHAN W. ACTON.

WHEATON BERAULT.

RODMAN CORSON.

ABRAM QUICK GARRETSON,
Associate Justice of New Jersey Supreme Court.

MARTIN PHILIP GREY,
Vice Chancellor of the State of New Jersey.

EDWIN A. STEVENS LEWIS.

RICHARD THOMPSON MILLER.

PAUL THEODORE SHINN.

JONATHAN W. ACTON.

Jonathan W. Acton was born in Salem, on the eighth day of November, eighteen hundred and fifty-seven, and was the youngest son of Captain Edward and of Mary E. Acton. He received his early education in the High School and Friends' Academy of Salem. Later he attended the United States Military Academy, at West Point, having been appointed a cadet by the Honorable Clement H. Sinnickson, then a member of Congress, but now Judge of the Salem Common Pleas. He determined to pursue the study of law, and with that end in view entered the office of the late Albert H. Slape. He was admitted to the Bar as an attorney at the June term of the Supreme Court, in eighteen hundred and eighty-four, and as counsellor at the June term, eighteen hundred and eighty-seven.

Mr. Acton possessed the confidence of the community of which he was a member, and in eighteen hundred and eighty-five was elected Mayor of the city of Salem, and was re-elected in eighteen hundred and eighty-eight, eighteen hundred and ninety-one, eighteen hundred and ninety-four and eighteen hundred and ninety-seven, an honor never conferred upon any other citizen of that place. In eighteen hundred and ninety he was appointed Prosecutor of the Pleas of Salem county and was re-appointed in eighteen hundred and ninety-six. In nineteen hundred and one he was elected a member of the Board of Education.

Mr. Acton was also active in social matters pertaining to his town, advocated the formation and was one of the members of the Board of Governors of its Country Club.

The striking qualities of Mr. Acton's life and character were his unswerving integrity, earnestness and courage. It has been said that Salem county never had a more diligent and fearless prosecuting attorney, or a more just one, and that as Mayor of the city he conserved the interests, the comfort and

the safety of the citizens so faithfully that he was a terror to evil doers.

In whatever position he was placed he performed his full duty. With an indomitable will and an unfaltering courage he never hesitated. He never faltered when the line of duty was clearly marked out. In his profession he was growing from year to year, and as an advocate his services were in continuous demand. In all the important litigation in the Salem Courts, and in many important cases in the adjacent counties, he appeared as counsel upon one side or upon the other. Mr. Acton was one of those public-minded citizens, so necessary to the welfare of the community, for, while devoted to his profession, he still found time to give attention to public and social affairs, and for this reason, as well as for the loss to its community of an honest and capable lawyer, the citizens of Salem mourned for his death on May sixth last.

WHEATON BERAULT.

Wheaton Berault died at Vineland, New Jersey, on November 23rd, 1906. He was the son of Charles and Mary Berault, and was born in New York City on December 17th, 1849. He was educated at St. Mary's College, Montreal, Canada, and the Pennsylvania Military Academy, Chester, Pennsylvania. He read law at Vineland with William A. House, and was admitted as an attorney at the June Term, 1879, and as a counsellor at the February Term, 1895.

Mr. Berault's reading was extensive, his information reliable and varied, and his knowledge and versatility as a linguist were marked by all who knew him. He was a man of generous impulses, of kindly disposition and the charm of his personality endeared him to those with whom he came in contact. He served his clients in an honorable and commendable manner, and presented their cause to Court or Jury in language that could not fail to attract favorable attention. He possessed the qualities of an orator, and in his death the Bar lost an able advocate. At the time of his death he contemplated moving to Atlantic City, where his ability would have found a wider scope, and an ampler field would have been presented for usefulness.

RODMAN CORSON.

The writer's acquaintance with Mr. Corson began many years ago, and ripened into friendship that was intimate and lasting until his death.

His social relations and intercourse with his friends and associates were always characterized by a large hearted, frank and genial disposition that secured for him the regard of strangers and the loving attachment of those whose claims were of a more intimate nature.

He read law in the intervals offered while he was working for a livelihood; he was a close student, a hard worker and indefatigible in the pursuit of every duty; his appreciation of a high sense of moral obligation was a characteristic of his business and personal life, and one of the qualities that endeared him to his friends and commanded the regard of all with whom he came in contact.

Rodman Corson was born in Cape May County, New Jersey, June 15th, 1866, and was the son of Captain Joseph H. and Abbie Corson, who still survive him. He read law in the office of Godfrey & Godfrey, of Atlantic City, and was admitted to the bar as an attorney in June, 1899, and as a counsellor in February, 1903. For several years prior to his admission to the bar he had been associated with his instructors in important clerical and fiduciary capacities, and these relations were continued in the broader fields of the practice of the law up to the time of his death, which occurred on the 13th of May, 1907.

His wife and two little daughters will miss and mourn the loss of an affectionate husband and father, but their grief can be no less sincere than the sorrow evinced by his associates of the Atlantic County Bar, where his lovable qualities were best known.

ABRAM QUICK GARRETSON.

Honorable Abram Quick Garretson was born in Franklin township, Somerset county, New Jersey, on March 11th, 1842.

He prepared for college at Trenton, entered Rutgers College, at New Brunswick, and graduated with honor from that college in 1862, receiving the degree of A. B. on graduation, followed in due course by the A. M. degree.

He spent one year at the Harvard Law School and a clerkship of three years with the Honorable A. O. Zabriskie, in Jersey City.

He was admitted to the New Jersey Bar as an attorney on November 9th, 1865, and as counsellor on November 5th, 1868. In 1865 he commenced the practice of the law in Jersey City, Hudson county, and continued practicing there until July, 1900.

He was appointed Prosecutor of the Pleas of Hudson county on February 2d, 1869, and re-appointed February 2d, 1874.

He was appointed aide-de-camp to Governor Joseph D. Bedle, with the rank of Sub-Colonel, on September 14th, 1875, and re-appointed Colonel on his staff on March 30th, 1876.

He was appointed President Judge of the Hudson County Common Pleas on April 1st, 1878, for a term of five years.

He was appointed one of the Associate Justices of the Supreme Court of New Jersey on July 17th, 1900, and on January 14th, 1901, was re-appointed for a full term of seven years.

He died at Morristown on June 3d, 1907.

He was a lawyer of ability, a clear, original and deep thinker. He was a man who, in all the varied relations of life, understood and practiced those duties which are founded in the spirit of morality. He was a judge who fully sustained at all times that purity, wisdom, legal knowledge and ability which so mark and distinguish the bench of the Supreme Court.

MARTIN PHILIP GREY.

Martin Philip Grey, late a Vice Chancellor of this State, died on Sunday afternoon, September 1st, 1906, at Wernersville, Pennsylvania, whence he had gone in quest of health. Mr. Grey was born in Camden, on December 20th, 1841, and was the third son of Philip James and Sarah Woolston Grey.

He was educated in Camden and Philadelphia, and, after studying law in the office of the Honorable Thomas P. Carpenter, was admitted to practice as an attorney at the June Term, 1863, of the Supreme Court, and as a counsellor at the June Term, 1866.

He began the practice of his profession at Salem, and there continued it until 1899, when he formed a partnership with his brother, Samuel Howell Grey, and thence until his appointment as a Vice Chancellor by Chancellor McGill, in 1896, these brothers, each able, learned and eloquent, pursued the practice of law in Camden under the firm name of Grey and Grey.

It is freely conceeded by all who knew him that Martin P. Grey was a lawyer of the first rank, and it follows that his services were constantly in demand in important suits. He respected all the noble and honorable traditions of his profession, esteemed it an honor to adhere strictly to its rigid ethics, and had a genuine scorn for all that was low, ignoble and merely mercenary, or that savored of commercialism.

Not, however, as a lawyer, but as a Judge and as a man, is it that he is best remembered.

It has heretofore been taken for granted that a good judge must possess certain qualities, and among them principally, intelligence, industry and integrity, but if the late Judge Sharswood is correctly reported these are not prime essentials, for it is stated that he declared that "a judge only needed to be a gentleman, as the lawyers pleading before him would supply him with law enough on which to base his opinions." Whether this

be true or untrue, it must be admitted that if not the prime, it is a prime essential of a good judge, for while there are many men who have intelligence, industry and integrity, there are some without the faintest glimmer of the qualities of a gentleman, and these never should be elevated to the bench. They may radiate much legal light, but they repress, embarrass and discourage counsel to such an extent that they fail to give their client the best that is within them, and the cause of justice is sure to suffer.

Mr. Grey was a constant and never varying example of the primal quality spoken of by Judge Sharswood, and to him one could truthfully apply the definition of Cardinal Newman, "It is almost a definition of a gentleman to say that he is one who never inflicts pain," as well as that of Chaucer in his description of the young Knight, "Curteis he was, lowly and serviceable." With a kind heart and a pleasing personality Mr. Grey was always sympathetic with one in trouble, always ready to lay aside his work and listen to him, to lend him a helping hand, and to give him the benefit and the aid of his great learning, his sound judgment and his large experience. Either on or off the bench one was assured of courteous treatment. Though he always spoke with great rapidity, and in a crisp manner, there was a total absence of austerity, or even the semblance of superiority.

To be a young man was not to him "an atrocious crime," and never would he do aught to stifle or crush his budding ambition. Such a one was assured of fully as considerate attention as the leader of the Bar, and it was his apparent delight to confer with him, to direct him to the sought-for authority and the apt precedent. None could ascribe to him the syllable of Wordsworth in Peter Bell:

> "Full twenty times was Peter feared
> For once that Peter was respected."

but rather those of Chaucer, above quoted, which the late Senator Hoar wrote abide today as the truest definition of a gentleman. It is impossible to correctly estimate the worth and the force of such a judge, for it extends far and beyond his decisions and his opinions. In Judge Reed's address upon the life of the late Judge Dixon, he refers to "the interesting qualities of Jus-

tice Knapp," to the fact that he was a man who "had gone through the world with his eyes open," and as such had been intimately acquainted with nature, its ways, its methods and its story. Surely, one may say the same of Judge Grey:

> "A primrose by the river's brim,
> A yellow primrose was to him,"

but it was infinitely more. It was an expression of God's beauty, of his marvelous handiwork. It was a part of the natural world, and that was a book that was always to be read and studied, that never ceased to attract and interest, from which he never turned, and about which it was a delight to hear him converse. No attraction could allure him away from his home at Salem and its beautiful trees. Added to this was a ready knowledge of the best literature, known, perhaps, only to those who drew him out in conversation, for he was singularly reticent in all that savored of display.

These general qualities of mind and character could not fail to make a good judge of one who had studied deeply in the law, and had practiced faithfully at the bar. Mr. Grey possessed a legal mind of high order. While his perception was quick and his judgment sound and clear, still he was painstaking and cautious in reaching a conclusion, due, I think, in a large measure, to his zeal in investigating to the limit of his power, to his desire to reach the truth which an eminent metaphysician describes as that only which has the possibility of verification by experience. When, however, Mr. Grey's mind was fully satisfied, he could and would, upon the conclusion of an argument, render a decision from the bench that was a marvel for its dissection of the evidence, its concise statement of the truth as he found it, its correct recital and apt application of the principles of law, and all couched in language that made one pause and wonder at its ready command. Whence came this felicity of speech, this flow of words? To those who know his ancestry, much must be ascribed to heredity; but much more to extensive reading, to study and to deep thought.

His opinions are to be found in the New Jersey Equity Reports, commencing with 10th Dickinson and ending with 2d

Robbins. That his reasoning was generally correct and his judgment generally sound is best attested by the fact that of eighty-two of his decisions appealed to the higher Court, sixty-seven were affirmed, three modified, and only twelve reversed.

Aside from his force as a Judge and lawyer Mr. Grey was a patriotic and public-minded citizen. He took an intense interest in public affairs and was always gravely concerned in his country's welfare. He esteemed it a duty as well as a privilege to vote, and whenever occasion demanded it he did not hesitate, before entering upon his judicial duties, to take his place in the political convention and upon the stump.

The consolation which survives the death of men like Mr. Grey is that their influence remains for good, and that like the immortal dead of George Eliot they live again in minds made better for their presence.

EDWIN A. STEVENS LEWIS.

Mr. Edwin A. S. Lewis, of the Hudson County Bar, died December 5th, 1906, at Bethlehem, N. H., where he had gone for his health. He was born in Pau, France, March 15th, 1870, and was the son of Edward Parke Custis Lewis, a colonel in the Confederate Army, and afterwards United States Minister to Portugal during the administration of President Cleveland. Mr. Lewis was descended from Fielding Lewis, whose wife was Betty Washington, a sister of George Washington. Their son, Lawrence Lewis, married Eleanor Parke Custis (a granddaughter of Mrs. Martha Washington), and their son, Lorenzo, was the father of Edward Parke Custis Lewis. He was a descendant therefore of both the Washington and Custis families. Through his mother, Mary Picton Stevens, he was descended from John Stevens, of Hoboken, inventor of the steam propeller boat, whose son, Edwin A. Stevens, was the maternal grandfather of Edwin A. Stevens Lewis.

He prepared for Princeton in Stevens High School of Hoboken and St. John's School, Sing Sing, New York, and was graduated from Princeton with the class of '91. After his graduation, he attended the New York Law School and was graduated from there in 1893. He was admitted to the bar as an attorney at the June Term, 1894, and as a counsellor at the June Term, 1897. Upon the death of John C. Besson, in 1894, Mr. Lewis formed a partnership with Samuel A. Besson and Richard Stevens, under the name of Besson, Stevens and Lewis, which partnership continued until April 1st, 1898, when a new partnership was formed consisting of Edwin A. S. Lewis, J. W. Rufus Besson (a son of John C. Besson) and Richard Stevens,

under the firm name of Lewis, Besson and Stevens, which partnership continued until his death.

In his death the Bar has lost a man who, by his serene spirit, loyalty to clients and ardor in upholding professional ideals, added respect to the affectionate admiration felt by all who came within the influence of his personal charm.

RICHARD THOMPSON MILLER.

It fell to the lot of Richard Thompson Miller to fill many responsible positions, and each with credit.

Born in Cape May City, on December 16th, 1845, he studied law with the Honorable Thomas P. Carpenter, of Camden, New Jersey, and was admitted to the Bar as an attorney in 1867, at the November Term of the Supreme Court, and as a counsellor in 1870, at the November Term.

Mr. Miller was City Solicitor of Cape May during the years 1869 and 1870; Judge of the District Court of the city of Camden from March 3rd, 1877, until April 11th, 1888; Prosecutor of the Pleas of Cape May county from April 19th, 1889 until April 1st, 1892; Judge of the Court of Common Pleas of Camden County from April, 1892, to March, 1893, when he resigned upon his appointment as a Circuit Judge. He served as such Judge until April, 1900, when he was succeeded by the late James H. Nixon. Thence until the time of his death, on December 14th, 1906, he pursued the practice of law in Camden.

To those who were obliged to practice in the Court for the Trial of Small Causes, the creation of the District Court was a great blessing, and now, with its enlarged jurisdiction, it has become one of the most important courts of our State, for in it many, if not all of the cases that were formerly tried in the Circuit Court are tried, and that with more speed, and with less expense to litigants. Many of the Justices who presided over the Court for the Trial of Small Causes were not learned in the law. In some instances they acted merely as a collection agency, generally had a favorite lawyer, and the verdict, unless a jury intervened, was generally for the plaintiff. In landlord and tenant cases the proceedings were so notoriously inaccurate that in contested cases counsel seldom went to trial without a writ of certiorari in his pocket. All of this ceased with the

advent of the District Court, and Mr. Miller, the first Judge of that Court in Camden, set his mind and will at work to make it worthy of the faith of its sponsors.

In Judge Carpenter's office he had studied well the principles of the Common Law, and had become an expert pleader; so that whenever a trial came on for hearing before him, the exact point in issue was always sought for, and this, together with the application of the rigorous rules of law to the facts elicited, controlled him. His Court thus became a forum for the enforcement of law in all its strictness.

In each succeeding position this same inflexibility was ever present. He was Judge of a Law Court, there was an issue to be solved, and that in accordance with the rules of law which applied to cases in law courts. Judge Miller was cautious, probably to excess, on the Bench, but that arose from his desire to be right, and from an ever-present fear of the result to the unsuccessful party. His honesty of purpose was never questioned, while his good judgment and his desire to render every litigant his just due were freely admitted. By the older members of the Bar he was respected and honored, and by the younger members looked up to and approached for advice. In the city of Camden all the older lawyers felt at liberty to consult Peter L. Voorhees, who was a veritable storehouse or encyclopædia of legal knowledge, and his office seemed to be a Mecca for these in difficulty or trouble, a safe port in stress of weather, while Mr. Miller's office seemed to serve the same purpose for those who were younger, and his exact knowledge of the law, and ability to point the place in the books where it could be found, made him a constant help to the recipients of his courtesy.

Lowel, in one of his poems, says that "Earth gets its price for what earth gives us," but the above incidents in the professional lives of these two lawyers would seem to challenge the truth of this in its entirety, and to prove that the boundary of one's vision is not always personal gain.

PAUL THEODORE SHINN.

Paul Theodore Shinn died at his home in Collingswood, Camden county, on January 19th, 1907. He was born in the city of Camden, on February 24th, 1875, and, after an education in that city, he prosecuted there his legal studies, and was admitted as an attorney at the February Term, 1896, of the Supreme Court, and as a counsellor at the February Term, 1899.

Until the time of his death, Mr. Shinn practiced law in the city of Camden. In all matters he was careful and conscientious, and, it necessarily follows, a safe and reliable counsellor. While at the beginning of his professional life an office lawyer, he was in his later days steadily and surely advancing toward the front rank as a Court lawyer. Time and experience would have placed him in a leading position in this respect. Although earnest, persistent and contentious, still Mr. Shinn made lasting friendships, for he had a bright, sunny disposition which endeared him to all who knew him well. From any point of view, his death was a distinct loss to the Camden Bar.

APPENDIX II.

APPENDIX II.

Report of Special Committee Upon the Judiciary Amendment.

To the State Bar Association:

This committee respectfully submits the following report:

The committee was appointed pursuant to the resolution adopted at a special meeting of the Association, held on September 28th, 1906, which reads:

"Resolved, 1. That this Association approve the plan and general features of the proposed Constitutional Amendment and Statute reported to the Governor by the commission provided for in the Act of March 31st, 1905; and

"2. That a committee be appointed by the President to confer with the Commissioners, and to promote favorable action thereon by the Legislature and the people.

"3. That the committee have power to add to its numbers."

Your committee conferred with the members of the Commission and discussed at length a number of proposed minor changes in the draft of the Amendment and Statute prepared by the Commission. Ultimately, your committee decided, with the assent of the Commissioners, that that draft should be introduced in the Legislature with only the two changes which were agreed to by this Association at the September meeting, namely, (1) the Appeals Division of the Supreme Court to consist of seven, instead of five members, and (2) the omission of the provision for the temporary assignment of Justices from the Lower Divisions to the Appeals Division.

The committee caused the Amendment and Statute accompanying it to be introduced simultaneously in both Houses of the Legislature. The measures were favorably reported by

the Judiciary Committee in each House and no amendment was proposed in either House to the measures as introduced.

In the Assembly, your committee could find no considerable or active opposition; but the majority leaders there deemed it advisable not to bring the Amendment to a vote till the Senate should have voted upon it, or till it (the Senate) had acted upon a joint resolution which the Assembly passed calling for a Constitutional Convention. In consequence of these obstacles, the Amendment did not come to a vote in the Assembly.

In the Senate, the Amendment met with opposition from two sources—one political, the other personal.

The opposition from these two sources made it apparent, upon a canvass of the Senate, that the Amendment could not pass. It was therefore not pressed to a vote.

While the Amendment was pending in the Legislature, your committee prepared and printed a leaflet containing a short statement of "Reasons for Supporting the Judiciary Amendment." These were distributed to members of the Legislature in both Houses and also to members of this Association and to the press.

Your committee is of opinion that the surest method of bringing about needed reforms in the judicial system is by informing the public more fully of the need for them. To that end, we recommend that the Association appoint a special committee to conduct a systematic course of disseminating accurate information to the public, showing the need for improvement in the judiciary system of the State.

WILLIAM M. JOHNSON,
Chairman.
CHARLES H. HARTSHORNE,
Secretary.

Dated June, 1907.

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LIST OF MEMBERS.

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